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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,647	07/28/2003	Amanda Elizabeth Chessell	RSW920030117US1	4885
53792 7590 03/19/2008 DILLON & YUDELL LLP 8911 N. CAPITAL OF TEXAS HWY. SUITE 2110 AUSTIN, TX 78759				
EXAMINER DUNCAN, MARC M				
ART UNIT 2113		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/628,647

Applicant(s)

CHESSELL ET AL.

Examiner

Marc Duncan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,7-10,12 and 16 is/are rejected.
7) ☒ Claim(s) 2-6,11,13-15 and 17-19 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/28/03
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, 12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Marwaha (2004/0181685).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha in view of Musman (2003/0126501).

Claims 1, 7-9, 12 and 16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4 and 13 of U.S. Patent No. 7,137,041.

Claims 2-6, 11, 13-15 and 17-19 are objected to.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the at least one business impact" in lines 1-2.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Marwaha (2004/0181685).

Regarding claim 1:

Marwaha teaches:

generating a symptom that identifies a problem in the business process
(paragraph 0056, lines 3-5 – an incoming alert is equivalent to a symptom);

identifying selected application programs in the plurality of application programs and/or selected IT components in the IT infrastructure that may cause the problem in the application program, based on the symptom (paragraph 0056, lines 8-10 – the source of the problem associated with the message is determined);

obtaining a respective situation for respective selected application programs and/or selected IT components, the respective situation being one of a set of

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component-independent predefined situation categories that is associated with the respective selected application programs and/or selected IT components, so as to provide status of the respective selected application programs and/or selected IT components in a common situation format that includes the associated one of the component-independent predefined situation categories (paragraph 0056 lines 8-10, paragraph 0058 tables, paragraph 0061 lines 1-5 – the alert messages that are received are parsed and tokens extracted to determine a status of the alert and then the message is put into a common event format that details the status, etc.); and

analyzing the respective situations that are obtained to identify at least one problem in the respective selected application programs and/or selected IT components that may cause the problem in the application program (Fig. 11 – 1108, 1110, 1120 and accompanying descriptions in paragraphs 0142 and 0143).

Regarding claim 8:

Marwaha teaches:

wherein the analyzing is followed by automatically identifying corrective action in the IT infrastructure based on the at least one problem in the selected IT components (Fig. 11 – 1120, 1124 and accompanying descriptions in paragraph 0143).

Regarding claim 12:

Claim 12 is rejected as computer readable medium having computer readable program code for performing the method of claim 1.

Regarding claim 16:

Claim 16 is rejected as the system for performing the method of claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha in view of Musman (2003/0126501).

Regarding claim 7:

The teachings of Marwaha are outlined above.

Marwaha does not explicitly teach generating a symptom based on an error log. Marwaha does, however, teach the generation of a common event format from source specific event information.

Musman teaches generating a symptom based on an error log (paragraph 0037 lines 5-8).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the error log teaching of Musman with the common event format teachings of Marwaha.

One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Marwaha teaches generating common event format messages from source-specific event information. Musman teaches that using an agent based approach to generating messages, wherein the agents generate the messages based on log files (paragraph 0037 line 5-8), provides the benefits of increased survivability (paragraph 0030 lines 1-3) and a distributed, decentralized, and yet coordinated decision making (paragraph 0032 lines 5-7).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

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be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 7-9, 12 and 16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4 and 13 of U.S. Patent No. 7,137,041. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of Patent '041 contain all the limitations of the instant claims except for the teaching of a business process, said business process being defined as a plurality of application programs running on an IT infrastructure. The claims of patent '041 do, however, teach an application program running on an IT infrastructure.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of patent '041 with the concept of multiple application programs instead of a single application program.

One of ordinary skill in the art at the time of invention would have made the combination because expanding the same error coverage from a single application program to plural application programs allows for protection of multiple programs and thus a more stable, reliable system.

Allowable Subject Matter

Claims 2-6, 11, 13-15 and 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marc Duncan/

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Primary Examiner, Art Unit 2113